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# PREVENTION, PREEMPTION, AND THE BUSH DOCTRINE

by

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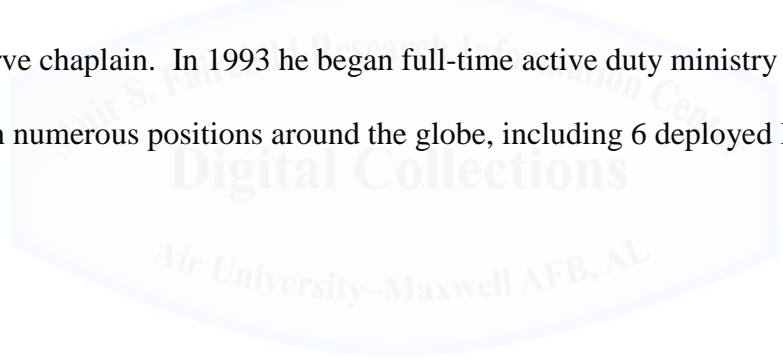
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## **Biography**

Chaplain, Lieutenant Colonel Timothy A. Butler is a U.S. Air Force chaplain assigned to the Air War College, Air University, Maxwell AFB, AL. He was graduated from the St. John's Seminary College in 1982 with a Bachelor of Arts degree in Philosophy, St. John's Seminary School of Theology in 1988 with a Master of Divinity degree in Theology, The George Washington University in 2000 with a Master of Arts degree in Organizational Management, and the Air University Air Command and Staff College in 2004 with a Master of Arts degree in Military Operational Art and Science. He was commissioned a second lieutenant in the U.S. Air Force Chaplain Candidate program in 1983. He was ordained a Roman Catholic priest of the Archdiocese of Boston in 1988 and continued his Air Force service as an Individual Mobilization Augmentee reserve chaplain. In 1993 he began full-time active duty ministry in the Air Force and has served in numerous positions around the globe, including 6 deployed locations.



## Abstract

With the publication of *The National Security Strategy of the United States of America*, September 2002, President George W. Bush became the first American president to articulate in official policy the willingness of the United States to engage in preemptive warfare. This “Bush Doctrine” set off a significant debate among policymakers and moralists as to the nature of preemptive war and whether or not the United States’ preparations to invade Iraq shortly thereafter were *de facto* preemptive or preventive. These debates often lacked clarity. The Bush administration and other policymakers frequently used the terms preemptive and preventive as if they were interchangeable, though they are not. Moralists frequently considered the morality of such action by reference to “the Just War Tradition” as if it was one, consistent voice throughout history, though it is not. This paper attempts to clarify these matters by differentiating between the theocentric and anthropocentric Just War traditions that developed in the West, clarifying the nature of preemptive and preventive warfare according to these traditions, and providing an historical analysis of the morality of preemption and prevention as articulated in the writings of major theocentric Just War theorists from the ancient to the early modern period. Because the author believes that the U.S. has consistently made decisions about the morality of war from the perspective of the theocentric Just War Tradition and that the invasion of Iraq was preventive rather than preemptive, which is prohibited by that tradition, he concludes that the Bush Doctrine should be abandoned.

## **Introduction**

The end of the Cold War and the shocking terrorist attacks in the United States on 11 September 2001 evinced dramatic changes to the international security environment. These changes have called into question the meaning of self-defense and raised concerns about the traditional categories of analysis used to consider the use of force. This was clearly evident in the debates surrounding national security after 9/11 and the U.S. decision to invade Iraq in March 2003. Yet, these debates have often lacked clarity with regard to understanding the Just War Tradition, definitions of preemption and preventive military action, and the appropriateness of applying the Just War Tradition and its traditional categories of analysis to the new international security environment. This paper will help clarify these matters. First, it will describe the two major Just War traditions that developed in the West, delineating foundational differences between the “theocentric” and “anthropocentric” approaches and the considering implications of following each tradition when making decisions about the use of military force. Next, it will differentiate between the concepts of preventive and preemptive war and provide an historical review of these in the writings of the major theocentric Just War theorists from the classical to the early modern period. Finally, it will assess the appropriateness of the U.S. applying Just War theories to evaluate the morality of warfare in the new international security arena. In doing so, it will call for a rejection of the Bush Doctrine of “preemptive” war in order to remain within the inherited theocentric Just War Tradition.

## **Just War Traditions**

From the beginning of recorded history, philosophers, theologians, canonists and statesmen have reflected upon the reality of war as a human phenomenon. In their reflections, they raise significant questions as to when it is appropriate to go to war (*jus ad bellum*), how to

appropriately execute wars (*jus in bello*), and what to do in the aftermath of war (*jus post bellum*). While approaching these questions from different perspectives, a body of literature developed over time that is commonly known as the “Just War Tradition.” Often mistakenly described as one continuous tradition, it is more accurately understood as a variety of traditions. In the West, two distinct Just War traditions developed over time; one theocentric and the other anthropocentric. While the foundations upon which theorists within these traditions built their Just War doctrines differ, the fundamental questions they answered and the categories of analysis they developed are remarkably consistent.

Most scholars trace the origins of the theocentric or “God-centered” Just War Tradition to the ethical writings of the early Christian theologian Augustine of Hippo (354-430 CE).<sup>1</sup> While it is the case that there were older Western influences of Greek and Roman origins on Augustine,<sup>2</sup> he was the first to consider rules of warfare within a theocentric context following the emergence of Christianity as the official religion of the Roman Empire. For him and the Christian writers who followed, there developed eight assumptions that form the foundation upon which their Just War theories stand and seven components of “Eternal Law” which were derived from these assumptions.<sup>3</sup>

As the term “theocentric” denotes, the assumptions that form the foundation upon which the theories of these Just War authors stand are rooted in God. Thus, the first assumption is the belief that there exists a unified, single, universal and transcendent Divine Being whom they call “God.” Second, they state that God created the universe in an ordered and harmonious way, and human beings can discover permanent, unchanging, stable, and unified truths, known as “Eternal Laws,” which are rooted in this “Eternal Order.” Fourth, they credit God with the creation of human beings and state that humans participate, by nature, in this Eternal Order. Next, they

believe that human beings are by nature rational and social beings. Sixth, they state that the goal of human life is to discover truth through the use of human reason and to live according to that truth; i.e. achieve harmony with nature and, ultimately, union with God. Seventh, because human beings have the capacity for rational thought, they deem them to be able to understand and ultimately approach truth. Finally, they state that human beings were created with free will. Therefore, in order to attain their true end, human beings must use their free will in accord with right reason to live a virtuous life; i.e. to know the truth and do what is good. These eight assumptions form the foundation upon which the theocentric Just War theories stand and are essential to defining the ethical standards of Just War theory as universal, knowable, and valid for all times.

From these eight assumptions theocentric Just War theorists derived seven components of Eternal Law. First, they postulate that Eternal Law is rooted in “Divine Reason” and, though unwritten, is embedded in the human heart. They also hold that Eternal Law is stable, permanent, and unalterable. Third, they believe all human beings were created “in the image and likeness of God.” Therefore, all human beings are of equal value and have an equal claim on human community. Next, they assert that Eternal Law can be observed in “nature” and that it provides standards and guidelines for all human beings and is applicable for all times. Fifth, they declare that concepts of justice and morality can be drawn from this universal “Natural Law.” Sixth, they believe this Divine and Natural Law is to be understood as the highest law, i.e. above civil laws and customs. Finally, they maintain that all people of all times owe their allegiance to this higher law. These seven components of Eternal Law follow from the basic assumptions made by the theocentric Just War theorists and are essential to understanding the binding nature of their Just War theories.

In summary, at the foundation of the theocentric Just War tradition are permanent, unchanging, stable, and universal truths. These truths have their origin in God. Human beings have the capacity to know them. The norms for human behavior with regard to war, postulated by theocentric Just War theorists, are formulated from these truths into universally binding laws which command the consciences of all people of all ages.

In contrast to the theocentric Just War Tradition, an anthropocentric approach to Just War theory was developed during the early modern period. As the term “anthropocentric” suggests, rather than looking to a Divine Being as the source of ethics and morality, these theorists look to human beings. Like their theocentric counterparts, these theorists root their theories in “Natural Law.” Though anthropocentric Just War theorists defined and described Natural Law in different ways, many of the assumptions upon which their theories were founded are similar and they share some of their foundations with those who espoused a theocentric approach to Just War theory.<sup>4</sup> First, the anthropocentric Natural Law proponents believe there exist permanent, unchanging, stable, and universal laws. Second, they state that human beings can discover these laws through a systematic, scientific, deductive rational analysis of nature. Third, each espouses a view of “nature.” For some, human beings in the “state of nature” are considered in essentially individualistic terms; i.e. “solitary creature[s] whose behavior is governed by raw, instinctive, utilitarian self-interest.”<sup>5</sup> For them, ethics and morality are rooted in those standards which best advance individual self interest or, in the case of the “common good,” mutual benefit and reciprocity. The result was the development of a purely secular system of ethics which was either subjective or situational; a matter of individual or societal will. For these theorists, what is considered good, right or just is not rooted in any absolute values or norms but is founded upon



the principle of expediency. Thus, the norms for human behavior with regard to war for these theorists are not universally binding and can change over time.

While the anthropocentric Just War Tradition developed and gained popularity during the early modern period of the 17<sup>th</sup> and 18<sup>th</sup> centuries, it did not supplant the theocentric Just War Tradition. It remained alongside it, often coming to the same or similar conclusions regarding right action in war. As a result, the Just War theories demonstrate fairly consistent principles across time regardless of the theorist's starting point. This is evident in the universal consensus among philosophers, theologians, canonists and statesmen regarding three basic questions that must be considered when making decisions about war. As noted previously, these are: when is it appropriate to go to war (*jus ad bellum*), how should wars be executed (*jus in bello*), and what should be done in the aftermath of war (*jus post bellum*). Perhaps this is one reason there has been little attempt to distinguish between theorists with theocentric or anthropocentric roots. With regard to the criteria theorists within each school established for their Just War theories, however, there is divergence.

The categories of analysis that must be considered when determining the justice of going to war, in war, and after the conclusion of hostilities developed gradually over time among theocentric just war theorists. As James Turner Johnson has written, "... by the latter portion of the fourteenth and early part of the fifteenth-centuries these Christian roots, combined with a number of other influences, including the legacy of Roman law, canon law, *jus gentium*, and such secular factors as chivalry, had coalesced to effectively produce a consensus concerning just war. Yet ... no individual thinker prior to the conclusion of the medieval period comprehensively presented all the elements contained within that consensus. It would be the Christian thinkers of the sixteenth and seventeenth-centuries who, drawing upon the consensus

that had gradually emerged during the medieval period regarding just war, presented it in a systematic manner.”<sup>6</sup> By the late medieval period, theocentric Just War theorists considered, in whole or in part, eight different categories of analysis or criteria that must be met when going to war, three that must be followed during war, and variously consider those that must be accomplished in the aftermath of war. Since the focus of this paper is preemptive and preventive war, it will consider here only the categories of analysis that must be met when going to war.

With regard to what makes going to war a just decision, over time Just War theorists developed eight categories of analysis that must be considered.<sup>7</sup> First and foremost, war must have as its primary goal a better peace than existed prior to going to war. Second, a just war can only be waged by legitimate authority. Third, the legitimate authority must have the right intention for going to war. The passions associated with anger or the desire for revenge are not considered right intention. Fourth, war can only be waged for a just cause. Here self-defense and righting a previously committed wrong are allowed while conquest and territorial expansion are prohibited. Fifth, the decision to use violent force must be a last resort after all political and diplomatic means have been exhausted. Sixth, there must be a formal declaration of war made by in order to make clear the intention of the legitimate authority and provide an opportunity to prevent hostilities. Seventh, in preparing for and planning to go to war proportionality must be observed. Finally, the consideration to go to war must include weighing the prospect for victory; i.e. only enter into war when there is a clear hope for success.

In summary, the essential differences between the theocentric and anthropocentric Just War traditions are their foundational principles. While there is consensus on the fundamental questions that must be addressed when going to war, in war, and after hostilities have ceased, and while theorists in both traditions often come to similar conclusions with regard to

appropriate military action, there is divergence on the grounding of their conclusions. For the theocentric Just War theorists, there are unchanging values and norms and these are grounded in the absolute authority of God. For the anthropocentric Just War theorists, values and norms can change over time and are not grounded in any absolute authority. Thus, there are significant implications which follow depending upon which Just War theorist one considers.

It is this author's conviction that the theocentric Just War Tradition is the appropriate starting point for discussions about the morality of military force for U.S. Lawmakers. This is because the prevailing world view of the United States, from the assumptions of her founders onward, has been and continues to be theocentric. The U.S. Declaration of Independence explicitly states that there are absolute, unchanging, universal values (i.e. human equality, life, liberty, and the pursuit of happiness), that these values are knowable (i.e. that they are self-evident), and that these values find their origin in a Divine Creator. Only the theocentric Just War tradition supports these foundational principles. Therefore, this author believes decisions by any U.S. administration to embark upon war is most properly considered from the perspective of theocratic Just War theory. The preservation of this tradition and its application to particular historical circumstances is essential to ensure the U.S. makes morally appropriate, just decisions about war.

### **Preemptive and Preventive War**

Of the eight categories of analysis, described above, that must be considered when going to war (*jus ad bellum*), it is within the category of just cause that preemptive and preventive war are considered. While the categories of analysis regarding the decision to go to war are shared in part or in whole by the various theocentric Just War theorists across the centuries, not all of the major theocentric theorists considered preemption or preventive war. Before surveying the

writings of those who did, it is important to distinguish between these two terms. Preemption is defined here as “a military attack or war launched in anticipation of a serious military threat that can be reasonably construed as an imminent attack. It is a form of self-defense, or in some cases, defense of a third party.”<sup>8</sup> In other words, for a war to be preemptive, a clear and distinct immediate threat must be present. A preventive war, on the other hand, is defined here as “forward-looking military action that aims to forestall a threat from developing to the point that it will become imminent and intolerable.”<sup>9</sup> Simply put, when there is the possibility of a potential or future threat and war is undertaken, that military action would be considered preventive. Unfortunately, the Bush Administration used both terms as if they were interchangeable when describing its justification for war against Iraq from 2002 onward, creating confusion with regard to the circumstances of the war and sparking a debate among moralists. Today most moralists have concluded that that military action more appropriately fits the definition of preventive war.

The earliest theocentric Just War theorist to discuss circumstances in which preemption might be justified was Augustine of Hippo (354-430 CE). As a moralist, Augustine was deeply rooted in the classics. For the ancient Greeks and Romans, there were three legitimate reasons for war: defense of the community, extension of the empire, and enslavement of those who deserved to be enslaved.<sup>10</sup> However, only the first reason made its way into the theocratic Just War tradition. As Augustine wrote, “A just war ... is justified only by the injustice of an aggressor.”<sup>11</sup> This notion of self-defense, of response to acts of unjust aggression, sometimes described as “lawful war,” became the foundational criterion of just cause when going to war for all subsequent theocentric Just War theorists. Lawful war further distinguished between defensive and offensive wars; defensive war repelling or preventing an unjust aggressor and

offensive war seeking to right a wrong that had already occurred. This distinction, however, has not continued in modern discussions of Just War theory.<sup>12</sup> In the context of his writings, Augustine never specifically or directly addressed preemption or prevention as elements of just cause. However, he did discuss the hypothetical use of violence in situations which we might consider today to fit descriptions of these two approaches to anticipatory self-defense. In *De libero arbitrio voluntatis*, Augustine notes that the characteristic of all people is to live without fear. In this context he addressed a preemptive circumstance. “I think we ought first to discuss whether ... an assassin lying in ambush can be slain in defense of life or liberty or chastity.”<sup>13</sup> In this case, he concluded the use of violence just on the basis of self-defense, presumably because the attack was imminent. Later on, however, he addressed himself to circumstances that would be considered preventive when he condemned Rome’s third war with Carthage (149-146 BCE) which he considered to have been “preventive military action that falsely promises peace and the freedom from fear through eliminating points of geopolitical vulnerability.”<sup>14</sup> As J. Warren Smith has noted, “Augustine reasonably limits anticipatory self-defense by excluding preventive wars that promise to secure ‘freedom from fear’ by eliminating any or all potential threats to national security. Such an objective is, from Augustine’s viewpoint, both impossible and immoral.”<sup>15</sup>

So strong was the notion that just cause for war could only be in self-defense, the morality of preventive war was not addressed directly until the 17<sup>th</sup> century. The clearly defensive requirement for going to war can be noted beginning with the writings of the great medieval Christian scholastic Thomas Aquinas (1224-1274) and continuing in the circumstances described as just cause by the early modern theorists Francisco de Vitoria (1480-1546) and

Francisco Suarez (1584-1617). These also suggest the possibility of preemptive circumstances as within the purview of just cause.

In the *Summa Theologica*, Aquinas commented on, ordered, and added precision to the teaching of Augustine on the morality going to war by delineating three conditions necessary for a war to be just: legitimate authority, just cause, and right intention.<sup>16</sup> Later he addressed himself to the morality of lethal self-defense as just cause when he quoted and commented on Exodus 22:2. “‘If a thief be found breaking into a house or undermining it, and be wounded so as to die; he that slew him shall not be guilty of blood.’ Now it is much more lawful to defend one's life than one's house. Therefore neither is a man guilty of murder if he kills another in defense of his own life.”<sup>17</sup> The term “thief” suggests intentionality and culpability. This is interestingly close, though not identical, to the circumstances of an assassin lying in wait described by Augustine. Aquinas’ description of the thief as “undermining” the purpose of a house, which can be described as safety, is unique though he did not develop or define what he meant by undermining. Yet, one could consider this as preemptive self-defense and since Aquinas considered self-defense as the only justification for killing, he provided no discussion of preventive action.

Since it was clear that self-defense in the theocentric Just War tradition needed no justification, it was roughly 350 years before discussions of just cause for war other than self-defense were first approached by the early modern Just War theorists Francisco de Vitoria (1480-1546) and Francisco Suarez (1584-1617). Like those theocentric just war theorists before them, they repeated the three categories of analysis defined by Aquinas and expanded their commentary upon them by distinguishing between defensive and offensive wars.<sup>18</sup> In line with the classical view of just cause, Francisco de Vitoria emphasized that “the state has no power to

wage war except to defend and protect itself and its property”<sup>19</sup> and “we may not use the sword against those who have not harmed us; to kill the innocent is prohibited by natural law.”<sup>20</sup> He then laid out three unjust causes for war: religion, enlargement of empire, and the glory or convenience of the prince.<sup>21</sup> While the first two were common objections during his time, the third was unique and intended to address the particular circumstances of Spain’s treatment of the Native Americans during their conquest of North America. Interestingly, while criticizing dimensions of the offensive conquest of America by the Kingdom of Spain, Vitoria “upheld the right of the Spanish to make war on the Amerindians in defense of the many likely innocent Amerindian victims of Amerindian cannibalism, human sacrifice, and euthanasia of the senile.”<sup>22</sup> Here Vitoria considered the Spanish behavior just because it is “punishing” the Amerindians for past behavior. In this context he also discussed the deterrent quality to this behavior; the intention to prevent future behavior. While he didn’t develop this in preventive or preemptive terms, his moving back and forth between defense and punishment resulted in a blurring of the conceptual boundaries between these two justifications for war.<sup>23</sup> Francisco Suarez is often considered the most prominent Scholastic theologian after Thomas Aquinas. Because he believed acting in self-defense within the theocentric Just War tradition really needed no justification, his discussion of just cause for going to war was primarily considering the justifying grounds for wars other than self-defense.<sup>24</sup> With regard to preemptive circumstances, he intimated that war was justified to “ward off acts of injustice and to hold enemies in check.”<sup>25</sup> Unfortunately, however, he did not elaborate on this point. In his disputation *On War*, he endorsed the traditional theocentric belief that just cause was necessary for a war to be just and, like Vitoria, rejected the older “error among the Gentiles” that war was a legitimate means for states or princes to “acquire prestige or wealth.”<sup>26</sup> Thus, like those before him, he made clear

that war should be limited to the righting of wrong. So, it cannot be claimed that either Vitoria or Suarez precisely formulated criteria or categories of analysis for the consideration of preventive or preemptive war.

The theocentric Just War theorists we have considered thus far were either early Christians or those within the specifically Roman Catholic Christian tradition. While the Protestant Reformation divorced ethics from the authority of the Church and resulted in the development of multiple voices within Christianity, there remained a unity within the theocentric tradition through the early modern period regarding when the use of force was considered morally just. As Gabrielle Blum writes: “Following the Reformation, the punitive theory of war persisted among Protestants and Catholics alike. Calvin asserted that ‘kings and people must sometimes take up arms to execute public vengeance’ and that wars were lawful to punish evil deeds.”<sup>27</sup> Luther, too, asked rhetorically, ‘What else is war but the punishment of wrong and evil’.”<sup>27</sup> Further, Luther wrote in *Whether Soldiers, Too, Can Be Saved*, “Self-protection is a proper cause of war and therefore all laws agree that self-defense shall go unpunished, and he who kills another in self-defense is innocent in everyone’s eyes.”<sup>28</sup> Though neither of these theorists addressed widely the issues of warfare, they both passed along the theocentric Just War positions they inherited. Nearly 200 years later, the eminent Protestant Just War theorist, Immanuel Kant, addressed directly the issues of preemption and preventive war.

Immanuel Kant (1724-1804), while clearly within the theocentric just war tradition, was heavily influenced by the anthropocentric thinkers of his time when he described man in the “state of nature” (i.e. chaos) as constantly under the threat of war. Because of this a careful reading of his thoughts on war is necessary. For example, in his *Metaphysics of Morals*, he argues that states may act preemptively; that states may initiate war in response to both active



violations or in cases where they may be threatened. “This includes another state’s being the first to undertake preparations, or even the menacing increase of another state’s power ... this is a wrong to the lesser power merely by the condition of the superior power, before any deed on its part, and in the state of nature an attack by the lesser power is indeed legitimate.”<sup>29</sup> While seemingly more permissive than those who preceded him, it is best to understand Kant as being descriptive rather than permissive. This is because he believed that international relations were not exercised in a simple “state of nature,” arguing that states had evolved to the point where rule of law, economic interchange, and interdependence provided the conditions for peace. Therefore, as Shue and Rodin have rightly pointed out, fully considered, Kant “implies that resort to preemption and preventive war should be increasingly rare as international society developed.” Thus, Kant implies that states which develop a preventive war doctrine are unjust: “But what is an unjust enemy in terms of the concept of the Right of Nations, in which – as in the case in a state of nature generally – each state is a judge in its own case? It is an enemy whose publicly expressed will (whether by word or by deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated.”<sup>30</sup> Therefore, Shue and Rodin conclude: “While preemption might be justified in specific and limited circumstances, a preventive-war doctrine, in Kant’s view, fails to promote peace and the rule of law, a key element of the just war tradition. Preventive war is thus really not preventive at all; it is an argument for aggression on the theory that others might one day be aggressive.”<sup>31</sup>

In summary, the major theocentric Just War theorists from the classical through the early modern period evidence a consistent prohibition against preventive war while allowing for preemption when a threat is considered to be clear and imminent. This position was the

operative foreign policy of the United States until the administration of President George W. Bush. We see this clearly in the rejection of calls for preventive military action against the Soviet Union in the late 1940s by President Harry S. Truman. In a radio address to the Nation in 1950 he stated: “We do not believe in aggression or preventive war. Such a war is the weapon of dictators, not [of] free democratic countries like the United States.”<sup>32</sup>

### **The Bush Doctrine**

The condition for the possibility of the United States waging a preventive war is described in the Bush Administration’s *The National Security Strategy of the United States of America, September 2002*: “For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often condition the legitimacy of preemption on the existence of an imminent threat – most often a visible mobilization of armies, navies, and air forces preparing to attack. We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries.”<sup>33</sup> The *National Security Strategy* continues: “The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security ... To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.”<sup>34</sup> In 2003 as the United States was preparing to invade Iraq, the Bush Administration frequently described the justification for the war in “preemptive” terms.<sup>35</sup> Most moralists today would argue, however, that the conditions were more clearly preventive in nature.

While it is the case that there have been major changes in the international security environment since the collapse of the Soviet Union and the end of the Cold War, described as emanating from rogue states and terrorists,<sup>36</sup> the challenges these changes represent do not allow

for the use of “preemption” or “preventive” military action as interchangeable nor an expansion of the term “imminent” to include threats that are not clear and immediate. As Jeffrey Record has stated, the Bush administration’s embrace of preventive war as a matter of declared military doctrine post-9/11 represents “the most significant America foreign policy departure since the Truman administration’s adoption of containment in the late 1940s.”<sup>37</sup>

As mentioned above, the Bush administration’s use of the terms “preemption” and “prevention” as if they were interchangeable set off a debate among moralists regarding definitions of these terms and the conditions required to justify each from the perspective of the Just War tradition. It is the conviction of this author that the confusion created by the Bush administration must be clarified in public discourse and that the U.S. must return to its previous unwillingness to consider preventive war as an appropriate use of military force in order to remain within the theocentric Just War Tradition.

### **Conclusion**

This paper has described the differences between the theocentric and anthropocentric Just War traditions in order to draw attention to the implications of following each tradition when making decisions about going to war. It then provided an historical review of the concepts of preventive and preemptive war as found in the writings of the major theocentric Just War theorists from the classical to the early modern period. It demonstrated that there is consistency within this tradition throughout this period regarding permission for preemptive war, in certain circumstances, but prohibition of preventive war in all circumstances. It next described the decision of the Bush Administration to consider preventive war as an option for U.S. foreign policy, as codified in U.S. *National Security Strategy, 2002*, as a departure from the theocentric Just War tradition. It stated that this provided the condition for the justification of the

preventive war in Iraq and a heated policy debate about the morality of preventive war. Finally, it suggested that the U.S. abandon its willingness to engage in preventive war in order to return to the theocentric Just War tradition.



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## Notes

<sup>1</sup> Gregory Raymond, "The Greco-Roman Roots of the Western Just War Tradition," in Howard M. Hensel (ed.), *The Prism of Just War: Asian and Western Perspectives on the Legitimate Use of Military Force*, (Aldershot, UK, Ashgate Publishing Ltd., 2010), p. 8.

<sup>2</sup> Roman notions of "equity" defined in John Eppstein, *The Catholic Tradition of the Law of Nations* (Catholic Association for International Peace, Washington, DC, 1935), p. 80.

<sup>3</sup> What follows is a summary of what Howard M. Hensel listed in, "Theocentric Natural Law and Just War Doctrine," in Howard M. Hensel (ed.), *The Legitimate Use of Military Force: The Just War Tradition and the Customary Law of Armed Conflict*, (Aldershot, UK, Ashgate Publishing Ltd., 2008), p. 7-8.

<sup>4</sup> What follows is a summary of what Howard M. Hensel listed in, "Anthropocentric Natural Law and its Implications for International Relations and Armed Conflict," in Howard M. Hensel (ed.), *The Legitimate Use of Military Force: The Just War Tradition and the Customary Law of Armed Conflict*, (Aldershot, UK, Ashgate Publishing Ltd., 2008), p. 54.

<sup>5</sup> Ibid., p. 54.

<sup>6</sup> Quoted in Howard M. Hensel, "Christian Belief and Western Just War Thought, in *The Prism of Just War: Asian and Western Perspectives on the Legitimate Use of Military Force*, (Aldershot, UK, Ashgate Publishing Ltd., 2010), p. 40.

<sup>7</sup> What follows is a summary of what Howard M. Hensel described in, "Theocentric Natural Law and Just War Doctrine," in Howard M. Hensel (ed.), *The Legitimate Use of Military Force: The Just War Tradition and the Customary Law of Armed Conflict*, (Aldershot, UK, Ashgate Publishing Ltd., 2008), p. 12.

<sup>8</sup> David Clough and Brian Stiltner, *On the Importance of a Drawn Sword: Christian Thinking about Preemptive War—and Its Modern Outworking* (Journal of the Society of Christian Ethics, 27, 2, 2007), p. 255.

<sup>9</sup> Ibid., p. 255.

<sup>10</sup> Robert G. Kennedy, "Is the Doctrine of Pre-emption a Legitimate Element of the Just War Tradition?", paper presented to the Joint Services Conference on Professional Ethics (27 January 2005), accessed at: <http://isme.tamu.edu/JSCOPE05/Kennedy05.html> (Accessed )

<sup>11</sup> St. Augustine, *City of God*, (Image Books, Garden City, NY, 1958), p. 447.

<sup>12</sup> Op cit., (Robert G. Kennedy), p. 5.

<sup>13</sup> Dom Mark Pontifex, (trans.) *St. Augustine: The Problem of Free Choice*, (Newman Press, New York, NY, 1955), Section I.V.11.

<sup>14</sup> J. Warren Smith, *Augustine and the Limits of Preemptive and Preventive War* (Journal of Religious Ethics, 35.1:141-162, 2007), p.11.

<sup>15</sup> Ibid., p. 19.

<sup>16</sup> Thomas Aquinas, *Summa Theologica*, II-II, Question 40: Is it always sinful to wage war? Found at <http://www.newadvent.org/summa> (Accessed 16 November 2011 ).

<sup>17</sup> Thomas Aquinas, *Summa Theologica*, II-II, Question 64, Whether it is lawful to kill a man in self-defense? Found at <http://www.newadvent.org/summa> (Accessed 16 November 2011 ).

<sup>18</sup> John Finnis, "The Ethics of War and Peace in the Catholic Natural Law Tradition," in Nardin, Terry (ed.), *The Ethics of War and Peace* (Princeton, NJ: Princeton University Press, 1996), p. 21.

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- <sup>19</sup> John Eppstein, *The Catholic Tradition of the Law of Nations* (Catholic Association for International Peace, Washington, DC, 1935), p. 107.
- <sup>20</sup> Craig L. Carr and David Kinsella “Preemption, Prevention, and Jus Ad Bellum,” paper presented to the annual meeting of the International Studies Association (March 2006), accessed at: <http://web.pdx.edu/~kinsella/papers.html>, p. 15.
- <sup>21</sup> Ibid., p. 302-3.
- <sup>22</sup> Op Cit., Finnis, p. 22.
- <sup>23</sup> Ibid., p. 22.
- <sup>24</sup> Ibid., p. 19.
- <sup>25</sup> Op Cit., Carr and Kinsella, p. 19.
- <sup>26</sup> Ibid., p. 18.
- <sup>27</sup> Gabriella Blum, *States’ Crime and Punishment*, a paper presented at the Institute for International Law and Justice International Legal Theory Colloquium, New York University Law School, Spring 2011, accessed at: <http://www.iilj.org/courses/documents/2011Colloquium.Blum.pdf> (Accessed 14 November 2011).
- <sup>28</sup> <http://gnesiolutheran.com/luther-whether-soldiers-too-can-be-saved/> (Accessed 14 November 2011).
- <sup>29</sup> Henry Shue and David Rodin, eds, *Preemption: Military Action and Moral Justification* (Oxford University Press, Oxford, 2007), p. 117.
- <sup>30</sup> Ibid., p. 117.
- <sup>31</sup> Ibid, p. 117-8.
- <sup>32</sup> Jeffrey Record, “Why the Bush Administration Invaded Iraq,” *Strategic Studies Quarterly* (Summer 2008): p. 79.
- <sup>33</sup> *The National Security Strategy of the United States of America, September 2002*, p. 15.
- <sup>34</sup> Ibid.
- <sup>35</sup> Press Briefing by Ari Fleischer on 19 March 2003, accessed at: <http://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030319-6.html> (Accessed on 14 November 2011).
- <sup>36</sup> Op Cit., *National Security Strategy*, p. 13.
- <sup>37</sup> Op Cit., Record, p. 78.